



Legislative Research Council

Regional Watershed Advisory Task Force Minutes

**Third Meeting
2014 Interim
November 24, 2014**

**Room 413
State Capitol
Pierre, South Dakota**

The third and final meeting of the interim Regional Watershed Advisory Task Force was called to order by Representative Brian Gosch, Chair, at 10:00 a.m. (CDT), on Monday, November 24, 2014, in Room 413 in the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Brian Gosch (Chair), Dennis Feickert, Leslie Heinemann, and Spencer Hawley; Senators Jason Frerichs, Tom Jones, Mike Vehle (Vice Chair), and Jim White; and Dennis Duncan, Mike Jaspers, Paul Symens, George Vandell, and Kim Vanneman. Mike Traxinger joined the meeting following the roll call. Staff members present included David Ortbahn, Chief Analyst for Research and Legal Services, Roxanne Hammond, Legislative Attorney, Amanda Jacobs, Research Analyst, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was recorded by South Dakota Public Broadcasting. The committee documents and archived recording are available at the LRC website at <http://legis.sd.gov> under "Interim – Agendas, Minutes and Committee Documents." For the purpose of continuity, these minutes are not necessarily in chronological order.

Minutes

MS. KIM VANNEMAN MOVED, SECONDED BY SENATOR JASON FRERICHS, TO APPROVE THE MINUTES OF SEPTEMBER 24, 2014. The motion prevailed unanimously on a voice vote.

Subcommittee Reports

Water Management Entities and Districts, Water Management Assets, and Funding of Best Practices Research Subcommittee: Ms. Kim Vanneman, Senator Jason Frerichs, Representative Spencer Hawley, and Mr. Mike Jaspers.

Ms. Vanneman, Chair, reviewed Draft 2 – *An Act to provide for the establishment of river basin natural resource districts and to repeal certain provisions regarding county drainage management (Document 1)*.

The subcommittee was not in agreement on whether or not municipalities should be included in the district. The draft currently includes municipalities.

Standardized Disclosure of New Drainage Projects, Tracking of Drainage, and Infrastructure Activity Subcommittee: Senator Mike Vehle, Representative Leslie Heinemann, Senator Tom Jones, and Mr. George Vandel.

Senator Vehle, Chair, reviewed Draft 3 Revised – *An Act to provide for a uniform county drainage permit application form and to require the disclosure of certain drainage projects (Document 2)*.

One member of the subcommittee stated that it was a mandate to the counties and did not include a mediation process, thus he could not support the draft. Other members would like to see some guidance regarding a permitting process to be included in Draft 2 in connection to the river basin natural resource districts.

Senator Vehle reviewed Draft 4 – *An Act to establish a technical assistance program for counties in matters relating to drainage regulation (Document 3)*. He noted the biggest drawback of this draft is the lack of funding.

Mediation and Dispute Resolution Subcommittee: Mr. Dennis Duncan, Senator Jim White, and Mr. Mike Traxinger.

Mr. Duncan, Chair, reviewed Draft 1 Revised – *An Act to provide for mediation of drainage disputes (Document 4)*.

The subcommittee had met with the Department of Agriculture and there were concerns relative to the intervention process and whether the intervention process should be left for the rule-making process or written into statute. Another question raised was whether it should be mandatory or voluntary mediation. The mediation would be voluntary but any agreement reached would be a binding contract.

Retention Pond Concept Subcommittee: Representative Gosch, Representative Feickert, and Paul Symens.

Representative Gosch, Chair, said the subcommittee did not have any agreed upon location or funding. If Draft 2 were to pass, the concept could be incorporated in it.

Public Testimony regarding subcommittee reports

Mr. Jay Gilbertson, Brookings, East River Water Development District (ERWDD), made the following suggested changes to Draft 2: Section 3 – strike "Little"; Section 5 – insert "Hamlin and Hutchinson"; Section 7 – insert "Faulk and Haakon"; Section 8 – insert "Beadle, Clay, Davison, Hand, Hutchinson, and Potter"; Section 16 on page 5, lines 5 and 7, after "elected" insert "at large".

Following a brief discussion by the task force, Mr. Symens noted that Marshall County should also be included in Section 4.

Ms. Trudy Wastweet, Deputy Secretary, Department of Agriculture, stated that the revisions in the Draft 1 Revised were more consistent with the other mediation programs administered by the department. She expressed concerns over a voluntary program when there are multiple landowners involved; was concerned on how the department could identify persons who are legitimately affected if there is an intervener provision; and asked for flexibility in the rules process so the department can have healthy discussions with stakeholders.

Mr. Michael Held, Huron, South Dakota Farm Bureau, stated the Farm Bureau is in support of mediation. They feel that Draft 3 Revised is not ready as it is as a mandate to the counties. At the annual meeting they liked the concept of the bill. In Draft 2, Sections 16, 19 and 20 raised concerns with their members and board. Section 24 needs further discussion on the fine amounts. He asked if anyone has done the math in Section 29 on what thirty cents per thousand dollars of taxable valuation would do. He also believes the requirement that at least 60% of the owners must sign a petition was too high in Section 34.

Ms. Jeanne Goodman, Department of Environment and Natural Resources, testified that the department is concerned about the repeal of 46A-10A in Sections 44 and 45 regarding the current drainage law and reference to the State Water Management Board.

In response, staff was instructed to draft an amendment, for action later in the meeting, to address that concern.

Mr. Brad Preheim, Centerville, Manager, Vermillion Basin Water Development District and TLC Water Project District, asked if the creation of a retention pond concept will take a few years, if there was any chance of getting money appropriated to fund dams as a backup plan.

Ms. Angela Ehlers, Presho, South Dakota Association of Conservation Districts, spoke in support of the basin concept. She supported Mr. Gilbertson's ideas. Section 19 regarding purchase or leasing of property, she commented that it included real property. She supports the Class 1 municipalities being included. Ms. Ehlers questioned in Draft 3 Revised if Section 3 was workable.

Mr. Paul Fuller, Clark, spoke on behalf of himself as a producer. In regards to Draft 3 Revised, on page 1, line 10, changing the fee from \$100 to \$500 - \$100 is too low. He asked, regarding lines 13-16, if a unrecorded drainage right would technically be illegal and subject to a fine. On page 2, lines 8 and 9, he asked who and how do you determine the affected property owners. On page 3, line 18 he feels that a repair of tile should not require a permit. On page 2, line 20, he questioned the language of "whether the outlet is gated". On page 3, lines 4 and 5, he questioned the relevance as participation in the federal farm program is optional. He stated he did not support Sections 4, 5, and 6 because he lives in a county that has opted not to have a drainage permit. He also expressed concerns with the concept of the river basin if divided by population.

Mr. Matt McCaulley, Sioux Falls, Attorney for the South Dakota Corn Growers, stated that they would like to see the task force move forward with the natural resource river basins

districts. In reference to Section 4 and Section 34 of Draft 2, control of the land should not be given over to the larger population basis. He was opposed to Draft 3 Revised as the counties need to get out of the business of regulating drainage. He stated that they support full disclosure prior to the project; however Draft 3 Revised goes beyond that. They do not support the permitting process.

Mr. Lorin Pankratz, Sioux Falls, representing the South Dakota Soybeans Association, the South Dakota Pork Producers, and the South Dakota County Commissioners, spoke in support of disclosure on the front end. They are also in support of Draft 4 regarding technical assistance because if decisions are made at the local level, they do not have the expertise needed.

Mr. Paul Lepisto, Pierre, Izaak Walton League of America, stated that in Draft 1 Revised, the mediation should be handled by the Department of Environment and Natural Resources instead of the Department of Agriculture because they are dealing with lakes and water. He asked that they encourage transparency in the process so that all affected are informed. He supports the fee proposed to cover the permits and that it should be enough to cover the administrative fee. He supports the concept on the makeup of the councils and how they are selected; however he would like to see criteria added that an environmental scientist and a hydrologist be added to each council. He also agrees that dealing with willing sellers and permanent perpetual easements are options that could be used. He also believes that municipalities should be included on the councils.

Task Force Recommendations and Draft Legislation

Draft 1 Revised – An Act to provide for mediation of drainage disputes. (Document 4)

Regarding the intervening clause, **SENATOR VEHLE MOVED, SECONDED BY SENATOR FRERICHS, TO DELETE SECTION 9 IN DRAFT 1 REVISED AND REPLACE IT WITH SECTION 10 OF DRAFT 1. Motion prevailed on a voice vote.**

MR. TRAXINGER MOVED, SECONDED BY SENATOR FRERICHS, TO AMEND SECTION 4 ON PAGE 2, LINE 21, BY DELETING "ESTABLISHED AGENCIES OF STATE GOVERNMENT, NONPROFIT CORPORATIONS, OR INDIVIDUALS" AND INSERTING "GOVERNMENTAL ENTITIES, NONPROFIT CORPORATIONS, INDIVIDUALS OR OTHER ENTITIES AS DETERMINED BY THE DEPARTMENT OF AGRICULTURE". Motion prevailed on a voice vote.

SENATOR JIM WHITE MOVED, SECONDED BY MR. MIKE JASPERS, THAT DRAFT 1 REVISED, AS AMENDED, BE INTRODUCED AS A TASK FORCE BILL. Motion prevailed on a roll call vote with 13 ayes, 1 excused. Members voting aye: Duncan, Feickert, Frerichs, Gosch, Hawley, L. Heinemann, Jaspers, Symens, Traxinger, Vandel, Vanneman, Vehle, and White. Member excused: Jones.

Draft 2 – An Act to provide for the establishment of river basin natural resource districts and to repeal certain provisions regarding county drainage management. (Document 1)

Regarding the changes suggested by Mr. Gilbertson and Mr. Symens, **MR. JASPERS MOVED, SECONDED BY MS. VANNEMAN, TO AMEND SECTION 3 BY DELETING "LITTLE"; AMEND SECTION 4 BY INSERTING "MARSHALL"; AMEND SECTION 5 BY INSERTING "HAMLIN AND HUTCHINSON"; AMEND SECTION 7 BY INSERTING "FAULK AND HAAKON"; AMEND SECTION 8 BY INSERTING "BEADLE, CLAY, DAVISON, HAND, HUTCHINSON, AND POTTER". Motion prevailed on a voice vote.**

MS. VANNEMAN MOVED, SECONDED BY SENATOR VEHLE, TO AMEND SECTION 16 ON PAGE 5, LINES 5 AND 7, AFTER "ELECTED" INSERT "AT LARGE". Motion prevailed on a voice vote.

REPRESENTATIVE LESLIE HEINEMANN MOVED, SECONDED BY MS. VANNEMAN, TO DELETE SECTION 20 REGARDING EMINENT DOMAIN. Motion prevailed on a voice vote.

SENATOR FRERICHS MOVED, SECONDED BY SENATOR VEHLE, TO AMEND SECTION 21, LINE 3, AFTER "STATE," INSERT "TRIBAL," AND AMEND SECTION 23, LINE 11, AFTER "STATE," INSERT "TRIBAL,". Motion prevailed on a voice vote.

MR. VANDEL MOVED, SECONDED BY MS. VANNEMAN, ON PAGE 12, INSERT A NEW SECTION BETWEEN LINES 12 AND 13 REGARDING LANGUAGE FOR THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES – AMENDMENT 0066 (DOCUMENT 5). Motion prevailed on a voice vote.

REPRESENTATIVE HEINEMANN MOVED, SECONDED BY MR. TRAXINGER, TO AMEND SECTION 18 ON PAGE 5, LINE 16, BY DELETING "PERMIT RULES,".

A SUBSTITUTE MOTION WAS MADE BY MR. SYMENS, SECONDED BY SENATOR FRERICHS, TO AMEND SECTION 18 ON PAGE 5, LINE 16, BY DELETING "PERMIT RULES," AND INSERT "DISCLOSURE REQUIREMENTS,". Substitute motion prevailed on a voice vote.

SENATOR FRERICHS MOVED, SECONDED BY REPRESENTATIVE GOSCH, TO AMEND SECTION 34, LINE 21, DELETE "SIXTY" AND INSERT "FIVE". Following a brief discussion, SENATOR FRERICHS WITHDREW THE MOTION AND REPRESENTATIVE GOSCH WITHDREW THE SECOND.

MS. VANNEMAN MOVED, SECONDED BY SENATOR FRERICHS, THAT DRAFT 2, AS AMENDED, BE INTRODUCED AS A TASK FORCE BILL. Motion prevailed on a roll call vote with 13 ayes, 1 excused. Members voting aye: Duncan, Feickert, Frerichs, Gosch,

Hawley, L. Heinemann, Jaspers, Symens, Traxinger, Vandel, Vanneman, Vehle, and White. Member excused: Jones.

Draft 3 Revised – An Act to provide for a uniform county drainage permit application form and to require the disclosure of certain drainage projects. (Document 2)

Draft 3 died for a lack of a motion.

Draft 4 – An Act to establish a technical assistance program for counties in matters relating to drainage regulation. (Document 3)

Draft 4 died for a lack of a motion.

Adjournment

REPRESENTATIVE FEICKERT MOVED, SECONDED BY MR. SYMENS, THAT THE MEETING BE ADJOURNED. The motion prevailed on a voice vote.

The Chair adjourned the meeting at 4:15 p.m.

